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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/558,092

11/23/2005

Peter Depew Fiset

043844-0106

2229

22428 7590 12/29/2009
FOLEY AND LARDNER LLP
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EXAMINER

FARAH, AHMED M

ART UNIT

PAPER NUMBER

3769

MAIL DATE

DELIVERY MODE

12/29/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/558,092	FISSET, PETER DEPEW	
	Examiner	Art Unit	
	Ahmed M. Farah	3769	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 09 November 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-5, 8-24 and 44 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-5 and 8-12 is/are allowed.
- 6) ☒ Claim(s) 13-24 and 44 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>5/22/2009; 11/9/2009</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

1. Claims 13-16 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The applicant's written description fails to teach that the system emits "only UVA light" as recited in the claim as amended.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 13-21 are again rejected under 35 U.S.C. 103(a) as being unpatentable over Doty et al. US Patent No. 5,374,825 in view of Wolff US Patent No. 4,703,184 and Dutta Pub. No. US 2005/0201963.

Art Unit: 3769

Doty et al. disclose a tanning device comprising: a chamber adapted for receiving a human subject to be tanned, and a plurality of UV light sources for tanning the subject's skin.

Doty et al. do not teach the use of only UV-A light for the tanning, or a nano-structure device for emitting the tanning UV light as claimed. However, the use of UV-A light for tanning purposes is known in the art. Furthermore, the use of a nanostructure device to generate a narrowband UV light is also known in the art. Wolff discloses a skin tanning apparatus comprising an UV light source for tanning a patient's skin. Wolf further teaches that the preferred light source provides only UV-A light (see col. 3, lines 63-64; col. 6, lines 39-41; and claim 14). Dutta teaches the use of non-particle device to produces UV or IR light, depending on the material and size of the nano-particles (see paragraph [0071]).

Note: the new claim language in the preamble of independent claim 13 that the "system emits only UV light," does not limit the claims only to UV light because the term "comprising" in the preamble is an open-ended statement. Hence, this term is given a limited patentable weight.

Therefore, at the time of the applicant's invention, it would have been obvious to one of ordinary skill in the art to modify Doty et al. in view of Wolff and use only UV-A light for tanning the skin. As described by Wolff, the UV-A light provides "rapid tanning." It would have been further obvious to one of ordinary skill in the art use non-particle device as an equivalent alternative source to provide the tanning UV light.

Art Unit: 3769

4. Claims 22-24 and 44 are again rejected under 35 U.S.C. 103(a) as being unpatentable over Dotty et al. in view of Wolff and Dutta et al. as applied to claims 1-5 and 7-21 above, and further in view of Salansky et al. US Patent No. 6,494,900.

Dotty et al, described above, fail to teach a method of treating Lupus with UV light. However, Salansky et al. teach that the use of UV light for treating lupus was known in the art since the early 19th century (see col. 1, lines 16-21). Therefore, at the time of the applicant's invention, it would have been obvious to one of ordinary skill in the art to modify Dotty et al. in view of Wolff and Dutta, also described above, and further in view of Salansky et al. in order to use the UV light for treating lupus. Since the use of UV light for treating lupus is known in the art, it would have been obvious to use a non-particle device as an equivalent alternative source to provide the treatment UV light.

Allowable Subject Matter

5. Claims 1-5 and 8-12 are allowed.

Conclusion

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ahmed M. Farah whose telephone number is (571) 272-4765. The examiner can normally be reached on Mon, Tue, Thur and Fri between 9:30 AM 7:30 PM.

Art Unit: 3769

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Johnson Henry can be reached on (571) 272-4768. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Ahmed M Farah/
Primary Examiner, Art Unit 3769

December 20, 2009.